

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES MOE MCPHAIL,

Defendant.

CR 20–21–BU–DLC

ORDER

United States Magistrate Judge Kathleen L. DeSoto entered her Findings and Recommendation Concerning Plea on March 4, 2021. (Doc. 69.) As neither party objected, they are not entitled to *de novo* review of the record. 28 U.S.C. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Therefore, the Court reviews the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Judge DeSoto recommends that the Court accept James Moe McPhail’s guilty plea after McPhail appeared before her pursuant to Federal Rule of Criminal Procedure 11, and entered a plea of guilty to one count of conspiracy to possess

with intent to distribute methamphetamine, in violation of 21 U.S.C. § 846, as set forth in the Indictment.

Finding no clear error, IT IS ORDERED that the Court ADOPTS the Findings and Recommendation (Doc. 69) IN FULL. As is the Court's practice, it will defer dismissing Count II of the Indictment and the forfeiture allegation until the sentencing hearing and on motion of the United States.

IT IS FURTHER ORDERED that James Moe McPhail's motion to change plea (Doc. 57) is GRANTED, and James Moe McPhail is adjudged guilty as charged in Counts I the Indictment.

DATED this 22nd day of March, 2021.



Dana L. Christensen, District Judge
United States District Court